

bing Maps

Poynters Lane, Shoeburyness, SS3 9

04/521 - 3 and 4 Home Farm Close,
Great Wakering



Bird's eye view maps can't be printed, so another map view has been substituted.

bing Maps

Poynters Lane, Shoeburyness, SS3 9

01/626 - land adjacent Barnfleet Villa,
Poynters Lane, Great Wakering



Bird's eye view maps can't be printed, so another map view has been substituted.



Appeal Decision

Hearing held on 18 February 2003

Site visit made on 18 February 2003

by Neil Roberts BA DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date:

25 FEB 2003

Appeal A: APP/B1550/C/02/1101882

Land at the Rear of 99 Green Lane, Eastwood, Leigh-on-Sea

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Raven against an enforcement notice issued by Rochford District Council.
- The Council's references are JM/Appeal/02/00003/COU/& 02/341/COU.
- The notice was issued on 9 October 2002.
- The breach of planning control as alleged in the notice is without planning permission change of use of the land shown edged red on the plan attached to the notice from open land to domestic garden.
- The requirements of the notice are:
 - (a) Cease using the site for the purposes of a domestic garden.
 - (b) Remove all domestic items from the site (including but not limited to children's play equipment, garden equipment/tools and all other domestic items and structures).
 - (c) Remove the fencing along the line X-Y on the plan attached to the notice or reduce or otherwise amend in height the said fence to no more than 1 metre in height.
 - (d) Erect a post and wire fence (or any alternative means of closure previously agreed in writing with the Local Planning Authority) to a height of not less than 1 metre but not exceeding 2 metres in height along the line indicated A-B on the plan attached to the notice.
- The periods for compliance with the requirements are:
 - Step (a) - immediately after the date of the notice coming into effect.
 - Step (b) - within 56 days of the date of the notice coming into effect.
 - Steps (c) and (d) - within 56 days of the notice coming into effect or within 28 days of the date of any approval under the above requirements.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act.

Summary of Decision: The appeal is allowed, the notice is quashed and planning permission is granted in the terms set out in the Formal Decision below.

Appeal B: APP/B1550/A/02/1095655

Land at the Rear of 99 Green Lane, Eastwood, Leigh-on-Sea

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Raven against the decision of Rochford District Council.
 - The application (Ref. 02/00341/COU), dated 16 April 2002, was refused by notice dated 18 June 2002.
- The development proposed is change of use of land to form extension to garden of 99 Green Lane.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Procedural Matters

1. As the issues in respect of the ground (a) appeal and the section 78 appeal are identical I shall deal with those two matters together before moving on, if necessary, to consider the ground (f) appeal.

Main Issues

2. The main issues in respect of both appeals are:
 - (a) whether the development is appropriate in the green belt;
 - (b) the effect of the development on the character and appearance of the area;
 - (c) if the development is inappropriate whether there are any very special circumstances which would outweigh the harm by reason of inappropriateness and any other harm I might identify.

Planning Policy

3. The development plan includes the Rochford District Plan First Review and the Essex and Southend Replacement Structure Plan. The site lies within the green belt and a special landscape area. Structure plan policy C2 and local plan policy GB1 aim to preserve the openness of the green belt by limiting development within it. Policy C2 is a criteria based policy setting out the national presumption against inappropriate development in the green belt unless there are very special circumstances. Local plan policy GB9 states that the extension of domestic gardens within the green belt will be permitted only in the most exceptional circumstances. Local plan policy RC7 deals with special landscape areas, and states a presumption against development which does not accord with the character of the area in which it is proposed.
4. Development plan policies generally reflect the basic thrust of national guidance as set out in Planning Policy Guidance Note 2 *Green Belts* (PPG2).

Reasons

The First Issue: Appropriateness in the Green Belt

5. PPG2 is of assistance in considering this matter. At paragraph 3.12 it is stated that "the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt." The five purposes of including land are: to check the unrestricted sprawl of built-up areas; to prevent neighbouring towns from merging; to help safeguard the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist urban regeneration by encouraging the recycling of derelict and other urban land.
6. So far as openness is concerned, I consider the use of the land as domestic garden in the manner I observed at the hearing has no adverse effect on the openness of this part of the green belt. I say that because there are no buildings or structures on the land, and the existing perimeter fencing on the northern and western boundaries allows views over the land. The eastern boundary is marked by a relatively dense hedge which appears to be of long standing. The land would remain open provided no buildings or structures were erected on the land, and provided the means of enclosure continued to allow views over the

land. The imposition of conditions removing permitted development rights would achieve that objective.

7. There is, however, a problem of security, given that Flemings Farm Road is a popular route for pedestrians and dog walkers. I understand that the site has a history of fly tipping, and only a matter of weeks ago a car was abandoned on the northern boundary in Flemings Farm Road. With that situation in mind it has been suggested that a one metre high rustic post and rail timber fence be erected in the position of the fence presently set back one metre from the northern boundary. Additionally, a two metre high post and wire fence would be set further into the site to provide security. I accept that this would allow views over the site and preserve its openness.
8. However, it is further suggested that planting of indigenous species would be carried out to the south of the two metre fence. Once the planting had matured into a secure hedge the fence could be removed. I accept that such a hedge could be an attractive feature. In order to achieve a reasonable degree of security, however, I feel it would have to be of a height which would largely obscure views over the appeal site, and the sense of openness would be lost. As I mentioned during discussion at the hearing, there is something of a conflict between the two objectives of preserving openness and achieving an adequate level of security. It seems likely to me that the openness of the site would be reduced.
9. Turning to the five purposes of including land within the green belt, I regard purposes 2, 4 and 5 as having no bearing on determination of this appeal. So far as checking the sprawl of built-up areas is concerned the development, subject to removal of permitted development rights, would not result in new buildings being constructed, but it would have the effect of extending the urban area. In similar vein the development has led to urban encroachment into what I regard as countryside. I acknowledge that the site is partly enclosed by urban features but that does not, in my view, take away its former semi-rural character.
10. On balance, because of the likely effect of the development on openness, and because of the conflict with two of the purposes of including land within the green belt, I consider the development to be inappropriate in the green belt.

The Second Issue: Character and Appearance

11. The site has a history of fly tipping, something which does not surprise me given its relationship to Flemings Farm Road. The appellant has cleared rubbish from the site, which now has a neat and tidy, albeit somewhat suburbanised appearance. Representations from a number of third parties comment on the improved appearance of the land. The Council suggested that powers under section 215 of the 1990 Act could be used to ensure the land was kept free of rubbish, but acknowledged that this would necessarily be a reactive rather than preventative process.
12. I have also had regard to the site's surroundings. Generally to the south is the ribbon of residential development on the northern side of Green Lane. To the east, beyond a narrow right of way to an electricity sub-station are the house and grounds of Woodcote. A large part of the garden of that property lies within the green belt. To the north on the other side of Flemings Farm Road is Nine Acres, a substantial detached dwellinghouse with a detached garage and extensive former agricultural buildings. To the west four timber stable buildings adjoin the common boundary. There are, therefore, urban features on three sides.

13. Another material consideration is the fact that if the notice is upheld the appellant would be able to exercise permitted development rights under Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 1995 to erect a fence up to two metres in height. The Council would have no control over such development, which could harm the character and appearance of the area, and reduce the openness of the site. I also note, from the photographs attached to the estate agent's particulars, that historically there has been a close boarded fence on the site's northern boundary.
14. On balance, weighing the benefits of rubbish clearance and increased protection of the site from further fly tipping against the current somewhat suburbanised appearance of the land, I consider it reasonable to conclude that the development has had a neutral effect on the character and appearance of the area, even taking account of its special landscape area status. When account is taken also of the fall back position regarding the erection of fences under permitted development rights, I am strengthened in that view.

The Third Issue: Very Special Circumstances

15. Two matters seems to me to be of particular relevance. The first is the fact that the site has been cleared of rubbish and, subject to agreement on a suitable means of enclosure, would be relatively secure against a re-occurrence of fly tipping. The second is the fact that new fences up to two metres in height could be erected under permitted development rights if the notice is upheld. If planning permission is granted, however, the Council would have control over the means of enclosure which, in public views from Flemings Farm Road, is likely to be the most prominent and striking feature of the development. On balance I consider these two factors, taken together, amount to very special circumstances outweighing the harm by reason of inappropriateness.

Other Matters

16. There was some discussion about precedent at the hearing. It was agreed that the site most vulnerable to pressure for garden extension is the paddock to the west of the appeal site. It was also agreed that beyond that paddock as the gap between Flemings Farm Road and the rear boundaries of residential properties widens the likelihood of development pressures diminishes. In any event I would expect applications for development elsewhere to be determined on their own merits.

Conclusions

Appeal A

17. For the reasons given above and having regard to all other matters raised, I consider that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not, therefore, need to be considered.

Appeal B

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

19. I have already touched upon matters which might be the subject of conditions. To protect the openness of the site I shall impose conditions removing permitted development rights in

respect of the erection of buildings or other permanent structures, the construction of hard surfaces, and the erection gates, fences, walls or other means of enclosure. I shall impose a condition requiring submission of a landscaping scheme, within which details of means of enclosure on or close to the northern boundary of the site can be incorporated, to give the Council control over the appearance of the development. To protect the openness of the land, and its character and appearance, I shall also impose a condition precluding the parking of caravans or other vehicles on the land.

20. As the development has already been carried out somewhat complicated time limits relating to various steps in implementation of the landscaping scheme have to be set to enable the planning authority to retain control.

FORMAL DECISIONS

Appeal A: APP/B1550/C/02/1101882

21. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at the rear of 99 Green Lane, Leigh-on-Sea, as shown on the plan attached to the notice, as a domestic garden subject to the following conditions:

- (1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure, and no buildings or other permanent structures, shall be erected on the land, and no hard surfaces shall be constructed on any part of the land.
- (2) No caravans or other vehicles shall be kept on the land.
- (3) The use of the land as domestic garden hereby permitted shall cease, any resultant debris removed from the land, and the land restored to its former condition within 3 months of any one of the following requirements not being met:
 - (a) within 3 months of the date of this decision there shall have been submitted for the approval of the local planning authority a scheme for the provision of landscaping (hereafter referred to as the landscaping scheme) and the said scheme shall include details of means of enclosure and a timetable for its implementation.
 - (b) Within 11 months of the date of this decision a landscaping scheme shall have been approved by the local planning authority or, if the local planning authority fail to approve such a scheme, or fail to give a decision within a prescribed period, an appeal shall have been lodged with and accepted by the First Secretary of State.
 - (c) in the event of an appeal being made in respect of requirement (b) above that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State.
 - (d) All works comprised in the landscaping scheme as approved shall have been implemented and completed within the timetable set out in the approved scheme.

Appeal B: APP/B1550/A/02/1095655

22. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for change of use of land to form extension to garden on land at the rear of 99 Green Lane, Leigh-on-Sea in accordance with the terms of the application Ref. 02/00341/COU dated 16 April 2002, and the plans submitted therewith, subject to the same three conditions as in respect of Appeal A above.

Information

23. A separate note is attached setting out the circumstances in which the validity of any of these decisions may be challenged by making an application to the High Court.
24. These decisions do not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
25. An applicant for any approval required by a condition attached to these permissions has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

Neil Roberts

Inspector

APPEARANCES

FOR THE APPELLANT

Mr IM Edwards FRICS DipTP FRTPI of Ian M Edwards Associates.

Mr S Raven Appellant.

FOR THE PLANNING AUTHORITY

Mr D Beighton BA(Hons) DipTP MRTPI Planning officer, Rochford District Council.

DOCUMENTS

- Document 1 List of persons present at the hearing.
- Document 2 Letter of notification and list of persons notified.
- Document 3 Copy of a letter of representation from Mr and Mrs R Bex.
- Document 4 Council's schedule of suggested conditions.
- Document 5 Copy of estate agent's particulars (with photographs) for 99 Green Lane, Eastwood.

PLANS

- Plan A Copy of the plan attached to the notice.
- Plan B 1:1250 scale planning application location plan.
- Plan C 1:500 scale planning application site plan.

PHOTOGRAPHS

- Photo 1 Council's 4 photocopied photographs of the appeal site.